

HOUSE BILL 833
By Hood

AN ACT to amend Tennessee Code Annotated, Title 67,
Chapter 4, relative to the authorization of
adequate facilities taxes for local governments.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding
the following as a new part:

Section 67-4-2901. This part shall be shall be known and may be cited as the
"Adequate Facilities Tax of 2005".

Section 67-4-2902. As used in this part, unless a different meaning clearly
appears from the context:

(1) "Building" means any structure built for the support, shelter or
enclosure of persons, chattels, or movable property of any kind; the term
includes a mobile home. This will not pertain to buildings used for agricultural
purposes.

(2) "Building permit" means a permit for development issued by a county
or municipality.

(3) "Capital improvement program" means a proposed schedule of future
projects, listed in order of construction priority, together with cost estimates and
the anticipated means of financing each project. All major projects requiring the
expenditure of public funds, over and above the annual local government
operating expenses, for the purchase, construction, or replacement of the
physical assets of the community are included.

(4) "Certificate of Occupancy" means a license for occupancy of a building or structure issued whether by a county or by any municipality.

(5) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to or increases the floor area of a residential or non-residential use.

(6) "Dwelling unit" means a room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly, or longer basis; physically separated from any other room(s) or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(7)

(A) "Floor area" for non-residential development means the total of the gross horizontal area of all floors, including usable basements and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings or the center lines of party walls separating such buildings or portions thereof, or within lines drawn parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding arcades, porticoes, and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas.

(B) "Floor area" for residential development means the total of the gross horizontal area of all floors, including basements, cellars, attics, porches and garages which is heated and/or air-conditioned living space,

or designed to be finished into heated and/or air-conditioned living space at a future date.

(8) "General plan" means the official statement of the planning commission which sets forth major policies concerning such future development of the jurisdictional area and meeting the provisions set forth in the Tennessee Code Annotated, Sections 13-3-301, 13-3-302 and 13-4-201. For purposes of this part only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage.

(9) "Governing body" means the county legislative body of a county or the municipal legislative body of a municipality or metropolitan government.

(10) "Major Street or road plan" means the plan adopted by the municipal planning commission, pursuant to Tennessee Code Annotated, Sections 13-4-201, 13-4-302, and 13-4-303, showing among other things, "the general location, character, and extent of public ways (and) the removal, relocation, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways";

(11) "Non-residential" means the development of any property for any use other than residential use, except as may be exempted by this part.

(12) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and includes plural as well as the singular number.

(13) "Place of worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, a place of worship does not

include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented or used by persons who do not have tax-exempt status.

(14) "Public buildings" means buildings owned by the state of Tennessee or any agency thereof, a political subdivision of the state of Tennessee, including but not necessarily limited to counties, cities, school districts and special districts, or the federal government or any agency thereof.

(15) "Public facility or facilities" means a physical improvement undertaken by the municipality, including, but not limited to the following: roads and bridges, parks and recreational facilities, jail and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities and other governmental capital improvements benefiting the citizens of the county and/or municipalities.

(16) "Residential" means the development of any property for a dwelling unit or units.

(17) "Subdivision regulations" means the regulations adopted by the governing body, as amended, pursuant to Tennessee Code Annotated, Section 13-4-303, by which the county or municipality regulates the subdivision of land.

(18) "Zoning ordinance or resolution" means the ordinance adopted by the governing body, as amended, pursuant to Tennessee Code Annotated, Section 13-7-201, by which the county or municipality regulates the zoning, use and development of property.

Section 67-4-2903. It is the intent and purpose of this part to authorize any county and any municipality to impose a tax on new development in the county or the municipality payable at the time of issuance of a building permit or certificate of

occupancy so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of new and expanded public facilities made necessary by the development.

Section 67-4-2904. Engaging in the act of development is declared to be a privilege upon which counties and municipalities may, by resolution of the governing body in the case of counties and by ordinance in the case of municipalities levy a tax.

Section 67-4-2905. The governing body may impose the tax authorized herein after adopting a capital improvements program indicating the need for the cost of public facilities anticipated to be funded, in part, by this tax and after finding that the need for the public facilities is reasonably related to the new development in the county or municipality. The resolution or ordinance of the governing body imposing this tax shall state the rate of tax on new residential and non-residential development. The governing body shall adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this part.

Section 67-4-2906. This part shall not apply to development of:

- (a) Public Buildings;
- (b) Places of Worship;
- (c) Barns or outbuildings used for agricultural purposes;
- (d) Replacement structures for previously existing structures;
- (e) Additions to a single-family dwelling;
- (f) A structure owned by a non-profit corporation which is a qualified 501(c) (3) corporation under the Internal Revenue Code;
- (g) Permanent residential structures replacing mobile homes where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, provided that the

permanent structure is a residence for the owner and occupant of the mobile home and that owner and occupant has resided on the property for a period of not less than three (3) years.

(h) Buildings moved from one site within the jurisdiction to another site within the jurisdiction.

Section 67-4-2907. For the exercise of the privilege described herein, counties and municipalities may impose a tax on new development based upon an amount per gross square foot of new residential development and new non-residential development. The county or municipality may develop a tax rate schedule by which residential and non-residential uses are classified by type for the purpose of imposition of the tax authorized herein.

Section 67-4-2908. The tax established in this act shall be collected at the time of application for a building permit for development as herein defined or if a building permit is not required, at the time of application for a certificate of occupancy by the county or city official duly authorized in the jurisdiction to issue building permits or certificates of occupancy. If the county tax is collected by the county, the county building official or other responsible municipal official shall receive payment in full in cash or other negotiable instrument as specified by resolution of the county and as approved by the county attorney. If the county tax is collected by the municipality, the municipality before issuance of building permit or certificate of occupancy, shall receive payment in cash or by a negotiable instrument payable to the county and subject to the approval of the county attorney in the full amount of the tax due. On the last business day of each week, the municipality shall transfer such cash and negotiable instruments to the county collector. No building permit for residential or non-residential development as herein defined shall be issued in a jurisdiction unless the tax has been paid in full to the county

or a negotiable instrument, approved by the county or city attorney and payable to the county or municipality, has been received.

Section 67-4-2909. The authority to impose this privilege tax on new development is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land development regulatory measures granted either by the private or public acts of the state of Tennessee and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

Section 67-4-2910. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law. This part shall be deemed to create an additional and alternative method for counties and municipalities to impose and collect taxes for the purpose of providing public facilities within the county.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.